

Presbyterian University Hospital d/b/a University of Pittsburgh Medical Center and JNESCO, District Council 1 a/w International Union of Operating Engineers, AFL-CIO. Case 6-CA-27086

April 28, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS
AND BROWNING

Upon a charge filed on February 28, 1995, the General Counsel of the National Labor Relations Board issued a complaint on March 6, 1995, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 6-RC-10921. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On April 3, 1995, the General Counsel filed a Motion for Summary Judgment. On April 5, 1995, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On April 19, 1995, the Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

The Respondent's answer and/or response to the Notice to Show Cause admit that the Union was certified and that the Respondent has refused to bargain, but attack the validity of the Union's certification on the basis of the Respondent's arguments in support of its objections to the second election.¹ In addition, the Re-

¹The original election was held on October 8, 1993, pursuant to a Stipulated Election Agreement. Thereafter, objections to the election were filed by the Respondent and the Intervenor, Pennsylvania Nurses Association. On March 21, 1994, the Acting Regional Director issued an order directing hearing on objections and notice of hearing based on the objections. Following the hearing, on June 14, 1994, the hearing officer issued a Report on Objections recommending that the objections by the Intervenor and certain of those filed by the Respondent be overruled, that Objections 1 and 2 by the Respondent be sustained, and that a new election be ordered. On June 28, 1994, the Employer filed exceptions. On August 11, 1994, however, the Union entered into a stipulation providing that the election be set aside and a second election be held and waiving its right to a Board decision on the objections. By letter dated August 19, 1994, the Associate Executive Secretary of the Board advised the Respondent that its exceptions to the hearing officer's report and recommendation were therefore moot. Thereafter, on August 22, 1994, the Acting Regional Director issued an order setting aside the election and ordering that a second election be conducted. No party filed

spondent's response to the Notice to Show Cause argues that, even assuming arguendo that the Union's certification was valid, the Union never made a proper demand for bargaining because it failed to give notice of the existence of a labor dispute to the appropriate mediation agencies pursuant to Section 8(d)(B) of the Act within 30 days of its bargaining request or following the Respondent's refusal to bargain, and that the Motion for Summary Judgment is therefore premature and inappropriate.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

We reject as without merit the Respondent's argument that the Union's bargaining request was invalid and that the Motion for Summary Judgment is therefore premature and inappropriate because the Union failed to give notice of a dispute to appropriate mediation agencies under Section 8(d)(B) of the Act. The validity of a bargaining demand in the instant circumstances is not conditioned on providing notice of a dispute to appropriate mediation agencies under Section 8(d)(B). A dispute under Section 8(d)(B) arises not with the initial bargaining demand, but after the Respondent has refused the demand or the parties otherwise fail to reach agreement. The notice requirements of Section 8(d)(B) (and Section 8(g)) are intended to give mediation agencies an opportunity to effect a settlement of such initial contract disputes before a strike or other work action is commenced. See Gorman, *Basic Text on Labor Law* 429-430 (1976); and Stapp, *Ten Years After: A Legal Framework of Collective Bargaining in the Hospital Industry*, 2 Hofstra Lab.L.J. 63, 65 (1984). See also *St. John's Hospital*, 281 NLRB 1163 (1986), enfd. 825 F.2d 740 (3d Cir. 1987); and *Greater New Orleans Artificial Kidney Center*, 240 NLRB 432 (1979). Moreover, it is clear that the Respondent would be refusing to bargain

exceptions. The second election was subsequently conducted on September 23, 1994. The results of the second election were 96 votes for and 25 against the Union, with 3 challenged ballots (the Intervenor was removed from the ballot pursuant to its request). Thereafter, on September 29, 1994, the Respondent filed objections to the second election. On November 10, 1994, the Regional Director issued a report recommending that the Board overrule the Respondent's objections. The Respondent subsequently filed exceptions. In a Decision and Certification of Representative dated January 31, 1995, the Board adopted the Regional Director's findings and recommendations and certified the Union.

even if the Union had given notice of a dispute to the appropriate agencies pursuant to Section 8(d)(B). The Respondent's February 27, 1995 letter in response to the Union's bargaining request clearly states that the Respondent was refusing to bargain "on the basis that the Certification is improper," and because it had "determined to technically violate the National Labor Relations Act so the matter can be appropriately reviewed by the United States Court of Appeals for the Third Circuit."

Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a not-for-profit corporation with an office and facilities in Pittsburgh, Pennsylvania, has been engaged in the operation of an acute care hospital providing medical care.

During the 12-month period ending January 31, 1995, the Respondent, in conducting its business operations, derived gross revenues in excess of \$250,000 and purchased and received at its Pittsburgh, Pennsylvania facility goods valued in excess of \$50,000 directly from points outside the Commonwealth of Pennsylvania. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and a health care institution within the meaning of Section 2(14) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Certification*

Following the second election held September 23, 1994, the Union was certified on January 31, 1995, as the collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time psychiatric nurses and staff nurses employed by the Employer at its Western Psychiatric Institute & Clinic Building located at 3811 O'Hara Street, Pittsburgh, Pennsylvania; excluding outpatient nurses, all other registered nurses, office clerical employees and guards, other professional employees and supervisors as defined in the Act, and all other employees.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. *Refusal to Bargain*

About February 7, 1995, the Union, by letter, requested the Respondent to bargain, and, since about

February 27, 1995, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after February 27, 1995, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Presbyterian University Hospital d/b/a University of Pittsburgh Medical Center, Pittsburgh, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with JNESCO, District Council 1 a/w International Union of Operating Engineers, AFL-CIO as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time psychiatric nurses and staff nurses employed by the Employer at its Western Psychiatric Institute & Clinic Building located at 3811 O'Hara Street, Pitts-

burgh, Pennsylvania; excluding outpatient nurses, all other registered nurses, office clerical employees and guards, other professional employees and supervisors as defined in the Act, and all other employees.

(b) Post at its facility in Pittsburgh, Pennsylvania, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 6, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

²If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with JNESO, District Council 1 a/w International Union of Operating Engineers, AFL-CIO as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time psychiatric nurses and staff nurses employed by us at our Western Psychiatric Institute & Clinic Building located at 3811 O'Hara Street, Pittsburgh, Pennsylvania; excluding outpatient nurses, all other registered nurses, office clerical employees and guards, other professional employees and supervisors as defined in the Act, and all other employees.

PRESBYTERIAN UNIVERSITY HOSPITAL
D/B/A UNIVERSITY OF PITTSBURGH
MEDICAL CENTER